STATE OF MICHIGAN

COURT OF APPEALS

In re ROBBY LAMPART.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

ROBBY LAMPART,

Respondent,

and

DIANA ALEXANDRONI,

Appellant.

FOR PUBLICATION
July 31, 2014

No. 315333
Gogebic Circuit Court
LC No. 2007-000087-DL

Advance Sheets Version

Before: BECKERING, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

RONAYNE KRAUSE, J. (*dissenting*)

I respectfully dissent and would affirm the trial court. I believe that the majority's conclusion eliminates the distinction between the kinds of legal processes that the United States Supreme Court has explained are contemplated by 42 USC 407(a) and other legal processes of any kind, and as a result trial courts will be hamstrung and Social Security Disability Insurance (SSDI) recipients will have essentially free rein to scoff at any law unless the violation thereof necessitates incarceration. I do not believe the plain language of the statute reflects an intent by Congress to achieve such an absurd result, so I would not create it.

The majority's recitation of the facts and the relevant statutes and caselaw requires no repetition. Where I part ways is with the majority's conclusion that 42 USC 407(a) reflects a choice to exempt SSDI benefits from *any* legal process not explicitly enumerated as an exception. The United States Supreme Court emphatically explained that the term "other legal process" in that statute would be a way in which a court compels compliance with some requirement, but also that any such process would be " '*in the nature of garnishment*,' " *Washington State Dep't of Social & Health Servs v Keffeler*, 537 US 371, 385; 123 S Ct 1017; 154 L Ed 2d 972 (2003), quoting the Social Security Administration's Program Operations

Manual System (POMS) GN 02410.200 (2002). The United States Supreme Court further opined that "other legal process" should be defined narrowly rather than "in abstract breadth." *Keffeler*, 537 US at 385.

As the majority correctly notes, under 42 USC 407(a), "moneys *paid*" (emphasis added) are also not subject to "execution, levy, attachment, garnishment, or other legal process"; the fact that such paid benefits are on deposit in a recipient's bank account does not shed them of that protection until they are in some way converted into some other kind of asset. *Philpott v Essex Co Welfare Bd*, 409 US 413, 415-417; 93 S Ct 590; 34 L Ed 2d 608 (1973). The protection against legal processes under 42 USC 407(a) therefore continues after the benefits are paid. *In re Vary Estate*, 401 Mich 340, 346-348; 258 NW2d 11 (1977).

Nevertheless, the United States Supreme Court observed that the terms " 'execution, levy, attachment, [and] garnishment' " are "legal terms of art" referring to "formal procedures by which one person gains a degree of control over property otherwise subject to the control of another, and generally involve some form of judicial authorization." *Keffeler*, 537 US at 383. It concluded that "other legal process" should therefore refer to the same kinds of processes. *Id*. at 384-385. Indeed, the Court emphasized that simply because some manner of legal process is involved does *not* mean that "other legal process" *within the meaning of 42 USC 407(a)* is at issue. *Id*. at 384. In view of this "restrictive understanding of 'other legal process,' " *id*. at 386, it is clear that not all legal processes or legal means of enforcing compliance with some court-ordered obligation will run afoul of the protections of 42 USC 407(a). The consistent theme is that courts may not directly assume control over the money that comes into a person's possession and control through SSDI payments, whether before or after those moneys are transferred.

The majority accurately notes that the factual scenario in *Keffeler* did not entail a party resorting to judicial process. That does not, in my opinion, invalidate any of the Court's reasoning. Beyond that, the majority apparently makes an end run around the Court's straightforward construction by concluding that *any* process that would have the ultimate result of conveying any portion of a recipient's SSDI proceeds into the hands of a court must be in the nature of garnishment. I simply cannot agree with that conclusion. The exercise of a trial court's contempt power is not in the same nature as the "other legal process" contemplated by 42 USC 407(a).

The power to punish contempt has always been considered inherent in courts and "essential to the exercise of their functions" or "the laws would be partially and imperfectly administered." See *United States v Sheldon*, Case No. 1315 (Mich Terr Sup Ct, 1829) (opinion by CHIPMAN, J.), in 5 Blume, Transactions of the Supreme Court of the Territory of Michigan 1825-1836, pp 337, 344-345. This power was regarded as being "inherent in, and as ancient as, courts themselves," and, critically, in the nature of "attachment *of the offender* . . . ." *In re Chadwick*, 109 Mich 588, 596-597; 67 NW 1071 (1896) (citation and quotation marks omitted) (emphasis added). A holding of contempt calculated to induce compliance with a court order—the situation at bar—is civil contempt, as distinguished from criminal contempt, which would be intended to punish some manner of misconduct. *Spalter v Wayne Circuit Judge*, 35 Mich App 156, 160-161; 192 NW2d 347 (1971). As the majority notes, a holding of civil contempt is not an exercise by the court of direct control over the contemnor's money, but rather is a personal

sanction imposed on the contemnor him- or herself that the contemnor holds the power to lift upon payment.

Unlike the majority, however, I do not believe this distinction to be semantic pettifoggery without real-world relevance. The legal processes listed in the statute and discussed by the United States Supreme Court involved processes that either bypassed the SSDI recipient entirely or otherwise assumed control over the money itself. Exercising authority over a person is in the nature of something entirely different from garnishment. Under a narrow reading of what 42 USC 407(a) means by "other legal process," as the United States Supreme Court has held is appropriate, the protections of that statute do not extend to precluding courts from exercising their contempt powers to compel compliance with their orders.

That being said, I wish to emphasize that the trial court apparently determined that Alexandroni is indigent and consequently waived or suspended her payment of fees pursuant to MCR 2.002(D). Although ability to pay is not a consideration for determining the obligation to pay restitution, present income and resources *are* considerations under the guidelines for making actual payments thereon. See MCL 712A.18(6); *In re Juvenile Commitment Costs*, 240 Mich App 420, 441-443; 613 NW2d 348 (2000). Incarceration for civil contempt is limited to the extent the contemnor is actually able to comply with the order or otherwise purge the contempt. *Shillitani v United States*, 384 US 364, 371; 86 S Ct 1531; 16 L Ed 2d 622 (1966); *People v Johns*, 384 Mich 325, 333; 183 NW2d 216 (1971) (stating that the opportunity to punish someone held in civil contempt for refusing to answer the questions of a grand jury expires with the grand jury). Although *Shillitani* and *Johns* discussed civil contempt holdings used to enforce compliance with grand juries, the same principle applies here: if a person subject to a financial obligation to the court is unable to make payments because of destitution, the court can no more subject the person to contempt than require payments. If that individual claims destitution, he or she is entitled to a hearing and determination thereof, and payments cannot be required unless or until the person is actually able to pay them. Put another way, the purpose and function of civil contempt is to deter *refusals* to comply with orders, not necessarily mere failures to comply. *In re Moroun*, 295 Mich App 312, 339-341; 814 NW2d 319 (2012) (opinion by K. F. KELLY, J.). SSDI recipients are in no greater danger of debtors' prison than any other potential contemnor, which is to say, they are not in any such danger.

Consequently, the trial court may not compel payments in the instant case at this time by using its contempt power, because insofar as I am aware, Alexandroni would not be able to comply. An inability to survive on the funds remaining after payment is, in my opinion, functionally identical to a lack of the funds altogether under any legal system that purports to have any concern for justice. However, the mere fact that her sole source of income is SSDI payments does not *per se* immunize her from the theoretical possibility of being ordered to make payments on pain of contempt. To hold otherwise would be essentially to neuter an inherent function of the courts and immunize recipients of SSDI benefits—even if they have funds to make payments—from having to pay traffic tickets, parking tickets, fines for misdemeanors, and indeed a great many other fees and financial obligations. Payment of SSDI benefits is not based on indigency. And it is incompatible with justice to prevent the courts from being able to require persons who can comply with court orders from doing so. Victims in any case, and perhaps here in this case, may be on SSDI. I simply refuse to hold that victims should pay for crimes

committed against them if a defendant has the ability to pay. The law does not require that result, and I will not impose that result on the victims of crime in this state.

I would therefore affirm.

/s/ Amy Ronayne Krause